

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO
DIVISION

Motion to Expedite Ruling; AND EMERGENCY

§ 2241 HABEAS CORPUS PETITION FORM

TO BE USED BY PRISONERS IN ACTIONS UNDER 28 U.S.C. § 2241
OR IN ACTIONS CHALLENGING REMOVAL PROCEEDINGS

Frederick Banks

05711068
Inmate/Alien #
NEOCC, 2240 Hubbard Road
Youngstown, OH 44505

(Enter full name of Petitioner,
prison number or alien [A] number, if applicable,
AND address of place of confinement.)

RECEIVED

AUG 14 2014

Clerk of Courts
U.S. District Court, N.D.O.

vs. Director/CEO,
Boez Allen Hamilton, Inc.;
United States Marshal;
Michael Pugh, Warden,
Warden; Federal Bureau of Prisons,
Hon Joy Flowers Conti;
Hon Nora Barry Fisher
Gary Zickefoose, Chaplain;
Co Brett; Co Solter

CASE NO: 414-1139
(To be assigned by Clerk)

[EVIDENTIARY HEARING REQUESTED]

(Enter name and title of each Respondent.
If additional space is required, use the blank
area below and directly to the right.)

ALL APPLICANTS MUST COMPLETE THIS ENTIRE FORM

ANSWER ALL OF THE FOLLOWING:

1. This petition concerns (check where applicable):

- (a) ☐ a conviction
(b) ☐ a sentence
(c) ☐ prison disciplinary action or other action resulting in lost gain time credits
(d) ☐ parole
(e) ☐ immigration/removal
(f) ☒ other (explain): Good time credits 54 days v 47 days

2. Provide the following information regarding the conviction(s) and sentence(s) for which you are presently incarcerated:

- (a). Name(s) and location(s) of court: US Dist CT (WDPA)
(b). Case Number(s): 03-245; 04-176
(c). Charge(s) for which you were convicted: revocation of supervised release

(d). What was your plea? (Check one)

- (1) Not Guilty ☒
(2) Guilty ☐
(3) Nolo contendere ☐

(e). Did you appeal from the judgment of conviction? Yes ☒ No ☐

3. If you did appeal, answer the following:

- US Ct of Appeals 3rd Cir.
(a) Name of Court: Affirmed Case #:
(b) Result: July 11, 2014
(c) Date of opinion and mandate (citation, if known):

4. Claims that challenge your conviction or imposition of sentence can only be raised by motion under 28 U.S.C. § 2255 unless the § 2255 motion is inadequate or ineffective to test the legality of your detention. If any of the grounds raised above challenge your conviction or sentencing:

(a) Have you filed a motion under 28 U.S.C. § 2255?

Yes ☒ No ☐

If yes, please provide the case #, where filed, relevant date(s), and the results: pending

USA v. Banks, 04-CR-176 (WDPA)

inadequate and ineffective

A 2255 is

(b). Explain why the remedy under § 2255 was or is inadequate or ineffective:

because I'm challenging the execution of the sentence.

5. Are you currently represented by counsel in this case or in any other court case?

Yes ☐ No ☒

If yes, please explain:

6. If this case concerns removal proceedings:

(a) Date of final order of removal:

(b) Did you file an appeal with the Board of Immigration Appeals? Yes ☐ No ☐

7. In the spaces below, set forth every ground which supports your claim that you are incarcerated unlawfully. Briefly summarize the specific facts in support of each ground raised. Conclusions that are not supported by specific facts are insufficient. You may attach additional pages if necessary to raise additional grounds or provide additional facts. Do not cite any law in your statement of facts.

US Marshal and Bureau of Prisons failed to credit
(a). Ground one: ~~me with 54 days of good conduct time but instead only~~
~~provided 47 days of good conduct time each year. 18 USC~~
~~3624(b) is ambiguous and since I'm an American Indian, member of~~
~~the Sioux Tribe and Tribal office the Indian Canon of Construction applied~~
~~and required that 18 USC 3624(b) be construed liberally in my favor to~~
~~credit me with 54 days of good time rather than 47 days per year.~~

I'm confined on a supervised

Supporting FACTS (state briefly without citing cases or law): ~~release violation and was~~
~~sentenced to 14 months of imprisonment. The US Marshal and BOP failed to~~
~~credit me for 54 days of good time instead credited me for 47 days per year~~
~~which was improper because 18 USC 3624(b) is ambiguous and I'm an American~~
~~Indian, a member of the Sioux Tribe and a Tribal official. See bop.gov~~
~~at inmate locator #05711068 (the inmate locator does not reveal my current~~
~~NEOCC location on the revocation violation sentence.) All rules, regulations,~~
~~statutes and constitutional provisions are construed liberally in an~~
~~Indians favor with ambiguous provisions interpreted to their benefit. County~~
~~of Yakima v. Confederated Tribes & Banks of Yakima Indian Nation 471 US 759,~~
~~766 (1985). See Wise v. Sniezek, 2005 US Dist Lexis 33396 (6th Cir. 2005)~~

Exhaustion: (noting that every district court to consider the issue

[1] - Have you presented ground one to the Bureau of Prisons, either through the prison grievance system or other administrative proceeding? found that 18 USC 3624(b) is ambiguous.

Yes ☐ No ☒ In a USM inmate not BOP

If yes, please provide the results of the proceeding(s) and the relevant date(s). Include any appeals:

See also Wise citing Petty v. Stine, 424 F.3d 509, 510 (6th Cir. 2005). I
note that my release from custody does not moot this petition as I am subject
to a term of supervised release. I request that the court expedite this
petition. All in violation of the Fifth Amendment Due Process Clause.

It is noted that the precise relationship between the Indian Canon and the
Chevron doctrine, requires that when the two are in conflict the Indian
Canon trumps the Chevron doctrine requiring deference to the Indians.

See Scott C. Hall The Indian Canon of Construction v. The Chevron Doctrine:
37 CONN L. REV 495 (2004); Cobell v. Norton, 240 F.3d 1081, 1101 (DC Cir. 2001)
(holding that the Indian canon prevailed over the Chevron Doctrine when the
two were in conflict).

[2]-(Answer only if you are challenging an issue related to removal (immigration) proceedings) - Did you present ground one to the Board of Immigration Appeals? Yes ☐ No ☐
If yes, please provide the results of the proceeding(s) and the relevant date(s). _____

(b). Ground two: The USM and FBOP failed to consider me for up to 12 months of halfway house time as required by the Second chance Act and in violation thereof. Congress passed the Second Chance Act of 2007 in part to amend 18 USC 3624(c)(1) which charges the BOP with facilitating a prisoner's reentry into society. The substance of the amendment provides "the BOP Director shall ensure that a prisoner serving a term of imprisonment spends a portion of the final months of that term (not to exceed 12 months), under conditions that will afford that prisoner a reasonable opportunity to adjust to and prepare for the reentry of that prisoner into the community." Second Chance Act, Pub L. 110-199, 251 Stat. 660, 692 (effective April 9, 2008). The statute is clear: prisoners are entitled to placement in a CCC up to 12 months. Gallier v. Shattell 2010 US Dist LEXIS 94590 (NDOH 2010). Here, The USM and BOP failed to provide Banks with any halfway house time at all. Banks is serving a 14 month sentence for a revocation of supervised release he has served over 9 months of his time which added to his good time totals approximately 11 months of a 14 month sentence and he hasn't been considered for any RRC/CCC halfway house time yet alone 12 months. The BOP statute applies to Petitioner via a CCA USM contract and independently as a penal Exhaustion: statute for Petitioner who is a prisoner serving a sentence of imprisonment. All in violation of the statutes and DUE PROCESS.
[1]- Have you presented ground two to the Bureau of Prisons, either through the prison grievance system or other administrative proceeding? As mentioned above under the Indian canon the Yes ☐ No ☒ court should construe 3624(c)(1) in Petitioner's favor.

If yes, please provide the results of the proceeding(s) and the relevant date(s). Include any appeals:

In a USM I made not Bop. Bop's administrative remedy program is unavailable to me

[2]-(Answer only if you are challenging an issue related to removal (immigration) proceedings) - Did you present ground two to the Board of Immigration Appeals? Yes ☐ No ☐

If yes, please provide the results of the proceeding(s) and the relevant date(s). _____

The USM and CCA chaplain failed to provide me with Kosher meals because he stated that I ordered "pig skins off of commissary". In the BOP I was provided with Kosher meals as a tenant of my religious faith Wicca however at CCA and under the USM I was denied Kosher meals in violation of the First Amendment Right to worship. The Court should order that Kosher meals be provided. I was never required to not eat "pig skins" because at the time of the purchase I was not on Kosher and secondly the "pork rinds" were not digested but given to someone else. Accordingly the Chaplain's denial had no merit and should be reversed. The Chaplain failed to allow for a religious Wicca meal each calendar year at any one of the sabbats but instead stated that a year had to pass between meals which was improper, in violation of the First Amendment and wrong. A Wiccan has eight sabbats that he celebrates and several esbats. In 2013 my ceremonial meal occurred at Yule in December in 2014 I requested a May Day ceremonial meal in May which was improperly denied. These claims effect my early release because through spell work at a Sabbat the Gods and Goddesses grant me relief during the celebration and the meals were a part of this.

(c). Ground three: meals because he stated that I ordered "pig skins off

All administrative remedies in this case have been exhausted moreover exhaustion was not required because petitioner is a USM inmate and also exhaustion is an affirmative defense which has to be pleaded by a respondent. regardless even if it isn't all remedies have been exhausted in this case prior to filing as petitioner filed remedies at cca using their USM internal system.

Supporting FACTS (state briefly without citing cases or law): _____

Exhaustion:

[1] - Have you presented ground three to the Bureau of Prisons, either through the prison grievance system or other administrative proceeding?

Yes ☐ No ☐

If yes, please provide the results of the proceeding(s) and the relevant date(s). Include any appeals: _____

[2]-(Answer only if you are challenging an issue related to removal (immigration) proceedings) - Did you present ground three to the Board of Immigration Appeals? Yes ☐ No ☐

If yes, please provide the results of the proceeding(s) and the relevant date(s). _____

(d). Ground four: CCA NEOCC Special Housing Unit Staff on Friday August 8, 2014 failed and refused to provide me with paper to draft a motion when they had an enter printer full of paper. CO Brett and Solter stated they had no paper. As a result my chest started to hurt. I have a history of high blood pressure. I thereafter asked these two officers six times over a thirty five minute period to provide me with a nurse and to call medical. when medical arrived the officers took another 30 minutes to open up the cell door trap so that I could speak to the nurse.

Supporting FACTS (state briefly without citing cases or law): CCA NEOCC Special Housing Unit Staff

Brett and Solter on Friday August 8, 2014 failed and refused to provide me with paper to draft a motion (I represent myself in two criminal re-arrest cases). I had paper provided paper and a legal call for a full week and neither was provided. CO Brett and Solter stated they had no paper as a result my chest started to hurt. I watched as Brett informed another inmate in a neighboring cell named Alfredo Miller about my issue with paper and inform other inmates about me. Miller asked what's wrong Brett stated that he was upset that we won't provide paper and "I've had enough headaches for today". At any rate the issue is the blatant belligerence and delay in providing medical care. Coincidentally medical

pressure reading was never provided because of the officers delay in granting access to my cell. This has been an ongoing thing of petitioner and a pattern of denials in violation of the Eighth Amendment. Two hours later a requested it did not appear. Solter improperly examined my crotch area when he opened the food tray. [1] - Have you presented ground four to the Bureau of Prisons, either through the prison grievance system or other administrative proceeding? In not a BOP inmate I did exhaust in the USM

Yes ☐ No ☐

another eighth amendment violation. though it's not required. The Court should immediately release me because as a result of being confined at NEOCC while during the execution of the sentence my Eighth Amendment rights were violated. Another issue w the CIA and NSA since 2012 and during my present confinement have engaged in unlawful data collection and surveillance using Signals Intelligence ("SigInt") which is wireless signals sent via satellite that target me to collect real-time data. As a result of this I had to

resign from my restaurant job and was subsequently incarcerated on a supervised release re-arrest. The FBI and
and data collection is ongoing and has not abated. CIA & NSA transmit also using this audio and video to my
detriment. For this they use a contractor who operates out of the NSA Hawaii operations center named BOOZ
Allen Hamilton who's headquarters are at 8283 Greenboro Drive, McLean VA 22102-3838 Tel: 1-888-224
7041. BOOZ Allen grants its agents unlawful broad access under a 'dual authorized' role in violation of 702
section of the National Security Act because they did this without warrant authorization in violation of the 4th
Amendment and Probable Cause. Meanwhile CO Semchee authored an unfounded incident report because he was trying
to get me to convert to Christianity (I'm a Wiccan). Semchee confiscated my Wiccan books and left a bible,
and uttered religious slogans such as "The Nature of Light" to me to do this when I refused to convert he wrote
me up and had me reclassified to a high custody inmate. All in violation of the First Amendment Free Exercise
and Establishment Clauses. The Court should discharge me for the violation of the U.S. Constitution.

[2]-(Answer only if you are challenging an issue related to removal (immigration) proceedings) - Did
you present ground four to the Board of Immigration Appeals? Yes ☐ No ☐

If yes, please provide the results of the proceeding(s) and the relevant date(s). _____

8. WHEREFORE, based upon the grounds raised above, Petitioner prays that the court will grant the
following relief: Order the USM and CCA and Respondents and BOP to
immediately apply 54 good conduct time days to Petitioner and transfer him
to a halfway house forthwith, hold a hearing as needed and grant all other
requested or warranted relief. Expedite ruling on this petition. Discharge Petitioner
from custody.

DECLARATION

I declare under penalty of perjury that I have read the above and the information contained herein is true
and correct.

8/6/14

(Date)



Signature of Petitioner

IF MAILED BY PRISONER:

I declare or state under penalty of perjury that this petition was (check one):

☐ delivered to prison officials for mailing, or ☒ deposited in the prison's internal mail system on:

8/6/14

(date).



Signature of Petitioner